

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:18-CR-2099 WJ

JAMES HIGHFIELD,

Defendant.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO APPOINT CJA COUNSEL

THIS MATTER IS BEFORE THE COURT on Defendant James Highfield's Motion to Appoint CJA Counsel (**Doc. 59**). Defendant seeks counsel to assist with the merits of his compassionate release request.

As a threshold matter, "no right to appointment of counsel exists when pursuing relief under 18 U.S.C. § 3582(c)." *United States v. Olden*, 296 F. App'x. 671, 674 (10th Cir. 2008). Indeed, the right to counsel extends only to the first appeal as of right, and no further. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). That said, by a recent Administrative Order, *see* 20-MC-00004-30, the undersigned Judge put into place a process for appointment of counsel in response to the influx of compassionate release requests courts are receiving in the wake of the COVID-19 pandemic.

Here, the Federal Public Defender asserts on Defendant's behalf that he has met the exhaustion requirements of § 3582(c)(1)(A). (*See* Doc. 59, ¶ 2). The Administrative Order requires the FPD to "certify that the defendant has fully exhausted as required by Tenth Circuit law." 20-MC-00004-30 at 2. The Court, therefore, construes the FPD's filing of the Motion to

Appoint CJA Counsel as its certification that the exhaustion requirement has been met and that Defendant may have a nonfrivolous claim for compassionate release.

Therefore, after due consideration of the Motion and Defendant's request, the Court **GRANTS** Defendant's request for appointment of counsel. The appointment of counsel shall issue by separate order. **The Clerk's Office is hereby directed to take the steps necessary to effectuate this Order.**

Once the appointment is made, **counsel should withdraw Defendant's pending *pro se* Motion (Doc. 58) and file a new motion on the Defendant's behalf.** See 20-MC-00004-30 at 3.

Finally, the Court notes that in granting the request for counsel, it does **not** reach the merits of Defendant's request, including a determination of whether Defendant has exhausted his administrative remedies. Accordingly, the United States is not precluded from raising any arguments, including exhaustion, in briefing on the merits.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE